

AMENDED IN SENATE MARCH 26, 2007

**SENATE BILL**

**No. 998**

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**Introduced by Senator Cox**

February 23, 2007

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An act to amend Sections 25165 and 31155 of, and to add Sections 25146.5, 25166.5, 25213.4, 25232.4, 25245.5, 31204, and 31409 to, the Corporations Code, and to amend Sections 22050, 22105, 22109, and 50123 of, and to add ~~Section 22065~~ Sections 12332, 12404, 17423.2, 17703, 22065, 22169, 22170, 23011.5, 23015, 50318.5, and 50512 to, the Financial Code, relating to ~~lending~~ business.

LEGISLATIVE COUNSEL'S DIGEST

SB 998, as amended, Cox. ~~Lenders~~: Commissioner of Corporations: business regulation.

(1) Existing law provides for the regulation, by the Commissioner of Corporations, of broker-dealers, investment advisors, franchises, escrow agents, persons engaged in the business of making consumer loans or deferred deposit transactions, finance lenders, residential mortgage lenders, and check sellers, bill payers, and proraters. A willful violation of the laws regulating these individuals is a crime.

This bill would authorize the Commissioner of Corporations, with respect to those individuals, to issue an order suspending or removing any officer, director, 10% or more shareholder, managing member, or general partner from his or her office, as specified, and to prohibit that person from participating in the business, as specified, for prescribed cause.

Under existing law, all applicants, except California corporations, applying for qualification of the sale of securities or registration of an offer to sell franchises are required to file with the commissioner a

*specified form appointing the commissioner as agent for service of process, as specified.*

*This bill would extend that exception to California limited partnerships and California limited liability companies.*

*Existing law makes it unlawful to make any untrue statement of a material fact in, among other things, an application filed with the commissioner.*

*This bill would make it unlawful to knowingly alter, destroy, mutilate, conceal, cover up, falsify, or make a false entry in any record, document, or tangible object with specified intent. The bill would also make it unlawful for any person to knowingly make an untrue statement to the commissioner during the course of licensing, an investigation or examination. The bill would specify that a person violating these provisions is liable for any applicable penalty, as specified. Because a willful violation of these provisions would be a crime, the bill would impose a state-mandated local program.*

~~Existing~~

(2) Existing law, the California Finance Lenders Law, provides for the licensure and regulation of finance lenders, as defined, by the ~~Commissioner of Corporations~~ commissioner and exempts specified entities from its provisions. Existing law requires the commissioner to investigate an applicant for licensure and, in the case of an applicant that is a corporation, trust, or association, to investigate its principal officers, directors, and certain other persons. Existing law authorizes the commissioner to deny an application for licensure under specified conditions.

This bill would exempt a person from the California Finance Lenders Law if that person is doing business under the laws of any state relating to, among other things, banks, credit unions, and small business investment companies. The bill would also exempt specified commercial loan transactions with sophisticated borrowers, as defined, from the provisions of the California Finance Lenders Law. The bill would require the commissioner, in investigating applications for licensure submitted by a corporation, trust, limited liability company, or association, to additionally investigate the applicant and its managing members. The bill would also authorize the commissioner to deny an application for licensure if the applicant itself has, within the last 10 years, been convicted or plead nolo contendere to a crime or committed specified acts involving dishonesty, fraud, or deceit.

~~Existing~~

(3) *Existing law, the California Residential Mortgage Lending Act, provides for the licensing and regulation by the commissioner of persons engaged in the business of making residential mortgage loans or servicing those loans. The California Residential Mortgage Lending Act requires a licensee that ceases to engage in activity regulated by the act, and that no longer desire to be licensed, to inform the commissioner in writing, surrender the license, and file other specified information with the commissioner, including a plan for the withdrawal from regulated business that includes a closing audit performed by an independent certified public accountant.*

*This bill would instead require the plan for withdrawal to include either the closing audit or a review or other procedures prescribed by rule or order of the commissioner.*

(4) *The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.*

*This bill would provide that no reimbursement is required by this act for a specified reason.*

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: ~~no~~-yes.

*The people of the State of California do enact as follows:*

1     SECTION 1. Section 25146.5 is added to the Corporations  
2     Code, to read:  
3     25146.5. (a) *Notwithstanding any other provision of law, the*  
4     *commissioner may issue an order suspending or removing a subject*  
5     *person of an issuer from his or her office with the issuer or from*  
6     *control of the issuer and prohibiting the subject person from further*  
7     *participating in any manner in the conduct of the business of the*  
8     *issuer, except with the prior consent of the commissioner, if, after*  
9     *notice and opportunity for a hearing, the commissioner finds the*  
10    *following:*  
11    (1) (A) *The subject person has violated any provision of this*  
12    *division or of any regulation or order issued under this division,*  
13    *or any provision of any other applicable law relating to the*  
14    *business of an issuer; or*

1 (B) *The subject person has engaged or participated in any*  
2 *unsafe or unsound act with respect to the business of the issuer;*  
3 *or*

4 (C) *The subject person has committed or engaged in any act*  
5 *which constitutes a breach of his or her fiduciary duty as a subject*  
6 *person; and*

7 (2) (A) *The issuer has suffered or will probably suffer*  
8 *substantial financial loss or other damage by reason of that*  
9 *violation, act, or breach of fiduciary duty; or*

10 (B) *The interests of the issuer's clients have been or are likely*  
11 *to be seriously prejudiced by reason of the violation, act, or breach*  
12 *of fiduciary duty; or*

13 (C) *The subject person has received financial gain by reason*  
14 *of that violation, act, or breach of fiduciary duty; and*

15 (3) *The violation, act, or breach of fiduciary duty is one*  
16 *involving personal dishonesty on the part of the subject person or*  
17 *one that demonstrates a willful or continuing disregard for the*  
18 *safety or soundness of the issuer's business.*

19 (b) *The commissioner may issue an order suspending or*  
20 *removing a subject person of an issuer from his or her office with*  
21 *the issuer or from control of the issuer and prohibiting the subject*  
22 *person from further participating in any manner in the conduct of*  
23 *the business of the issuer, except with the prior consent of the*  
24 *commissioner, if, after notice and opportunity for a hearing, the*  
25 *commissioner finds the following:*

26 (1) *The subject person's conduct or practice with respect to*  
27 *another issuer or business institution has resulted in substantial*  
28 *financial loss or other damage; and*

29 (2) *The conduct or practice has evidenced personal dishonesty*  
30 *or willful or continuing disregard for the safety and soundness of*  
31 *the other issuer or business institution; and*

32 (3) *The conduct or practice is relevant in that it demonstrates*  
33 *unfitness to continue as a subject person of the issuer.*

34 (c) *The commissioner may immediately issue an order*  
35 *suspending or removing a subject person of an issuer from his or*  
36 *her office with the issuer or from control of the issuer and*  
37 *prohibiting the subject person from further participating in any*  
38 *manner in the conduct of the business of the issuer, except with*  
39 *the prior consent of the commissioner, if the commissioner finds*  
40 *and gives the subject person notice of the following:*

1     *(1) It is necessary for the protection of the issuer or the interests*  
2     *of the issuer's clients that the commissioner issue the order*  
3     *immediately, and*

4     *(2) (A) Any of the factors set forth in paragraphs (1) and (2)*  
5     *of subdivision (a) and any of the factors set forth in paragraph (3)*  
6     *of subdivision (b) are true with respect to the subject person; or*

7     *(B) Any of the factors set forth in paragraphs (1), (2), and (3)*  
8     *of subdivision (b), and the factor set forth in paragraph (3) of*  
9     *subdivision (b) are true with respect to the subject person.*

10    *(d) (1) The commissioner may immediately issue an order*  
11    *suspending or removing a subject person of an issuer from his or*  
12    *her office with the issuer or from control of the issuer and*  
13    *prohibiting the subject person from further participating in any*  
14    *manner in the conduct of the business of the issuer, except with*  
15    *the prior consent of the commissioner, if the commissioner finds*  
16    *and gives the subject person notice of the following:*

17    *(A) The subject person has been charged in an indictment issued*  
18    *by a grand jury or in an information, complaint, or similar*  
19    *pleading issued by a United States attorney, district attorney, or*  
20    *other governmental official or agency authorized to prosecute*  
21    *crimes, with a crime that is punishable by imprisonment for a term*  
22    *exceeding one year and that involves dishonesty or breach of trust;*  
23    *and*

24    *(B) The person's continuing to serve as a subject person of the*  
25    *issuer may pose a material threat to the interest of the issuer's*  
26    *clients or may threaten to materially impair public confidence in*  
27    *the issuer. In case the criminal proceedings are terminated other*  
28    *than by a judgment of conviction the order shall be deemed*  
29    *rescinded.*

30    *(2) The commissioner may immediately issue an order*  
31    *suspending or removing a subject person of an issuer, or a former*  
32    *subject of an issuer, from his or her office with the issuer or from*  
33    *control of the issuer, and prohibiting the person from further*  
34    *participating in any manner in the conduct of the business of the*  
35    *issuer, except with the prior consent of the commissioner, if the*  
36    *commissioner finds and gives the subject person notice of the*  
37    *following:*

38    *(A) The person has been finally convicted of a crime which is*  
39    *punishable by imprisonment for a term exceeding one year and*  
40    *which involves dishonesty or breach of trust; and*

1     (B) *The person's continuing to serve or resumption of service*  
2 *as a subject person of the issuer may pose a material threat to the*  
3 *interests of the issuer's clients or may threaten to materially impair*  
4 *public confidence in the issuer.*

5     (3) *The fact that a subject person of an issuer charged with a*  
6 *crime involving dishonesty or breach of trust is not finally*  
7 *convicted of that crime shall not preclude the commissioner from*  
8 *issuing an order regarding the subject person pursuant to other*  
9 *provisions of this division.*

10    (e) *Within 30 days after an order is issued pursuant to*  
11 *subdivision (c) or (d), the person to whom the order is issued may*  
12 *file an application for a hearing.*

13    (f) *Any person to whom an order is issued under subdivision*  
14 *(a), (b), (c), or (d) may apply to the commissioner to modify or*  
15 *rescind that order. The commissioner shall not grant that*  
16 *application unless the commissioner finds that it is in the public*  
17 *interest to do so and that it is reasonable to believe that the person*  
18 *will, if and when he or she becomes a subject person of an issuer,*  
19 *comply with all applicable provisions of the applicable law and*  
20 *of any regulation or order issued thereunder.*

21    (g) (1) *It is unlawful for any subject person of an issuer or*  
22 *former subject person of an issuer to whom an order is issued*  
23 *under subdivision (a), (b), (c), or (d) to do any of the following,*  
24 *except with the prior consent of the commissioner, so long as the*  
25 *order is effective:*

26    (A) *To serve or act as a officer, director, 10 percent or more*  
27 *shareholder, managing member, or general partner of any issuer.*

28    (B) *To vote any shares or other securities of an issuer having*  
29 *voting rights for the election of any person as a director of an*  
30 *issuer.*

31    (C) *Directly or indirectly, to solicit, procure, or transfer or*  
32 *attempt to transfer, or vote any proxy, consent, or authorization*  
33 *with respect to any shares or other securities of any issuer having*  
34 *voting rights.*

35    (D) *Otherwise to participate in any manner in the conduct of*  
36 *the business of any issuer.*

37    (2) *Any person who violates paragraph (1) shall, upon*  
38 *conviction, be punished by a fine of not more than ten thousand*  
39 *dollars (\$10,000) or imprisoned in the state prison, or in a county*  
40 *jail not to exceed one year, or by both such fine and imprisonment.*

1     (3) *If the commissioner believes that any person has violated*  
2 *paragraph (1), the commissioner may bring an action in a court*  
3 *of competent jurisdiction petitioning the court to assess that person*  
4 *a civil penalty in an amount as the commissioner may specify;*  
5 *provided, however, that the amount of the civil penalty shall not*  
6 *exceed two thousand five hundred dollars (\$2,500) for each*  
7 *violation or, in the case of a continuing violation, two thousand*  
8 *five hundred dollars (\$2,500) for each day for which the violation*  
9 *continues.*

10     *In determining the amount of a civil penalty to be assessed under*  
11 *this paragraph, the court shall consider the financial resources*  
12 *and good faith of the person charged, the gravity of the violation,*  
13 *the history of previous violations by the person, and such other*  
14 *factors as in the opinion of the court may be relevant.*

15     *(h) A hearing held pursuant to this section shall be private*  
16 *unless the commissioner, in his or her discretion, after fully*  
17 *considering the views of the parties, determines that a public*  
18 *hearing is necessary to protect the public interest.*

19     *(i) For purposes of this section, “subject person” means any*  
20 *officer, director, 10 percent or more shareholder, managing*  
21 *member, or general partner.*

22     *SEC. 2. Section 25165 of the Corporations Code is amended*  
23 *to read:*

24     25165. Every applicant for qualification of the sale of securities  
25 under this law or every person filing an application or a notice  
26 under Sections 25100.1, 25101.1, 25102.1, and 25230.1 or a request  
27 for or notice of an exemption from qualification (other than a  
28 California corporation, *California limited partnership*, *California*  
29 *limited liability company*, or a person licensed as a broker-dealer  
30 in this state) shall file with the commissioner, in such form as  
31 prescribed by rule, an irrevocable consent appointing the  
32 commissioner or his or her successor in office to be the applicant’s  
33 or person’s attorney to receive service of any lawful process in  
34 any noncriminal suit, action or proceeding against the applicant  
35 or person or the successor, executor or administrator thereof, which  
36 arises under this law or any rule or order hereunder after the  
37 consent has been filed, with the same force and validity as if served  
38 personally on the person filing the consent. A person who has filed  
39 such a consent in connection with a previous qualification under  
40 this law (or application for a permit under any prior law if the

1 application under this law states that such consent is still effective),  
2 or in connection with a notice filing under Section 25100.1,  
3 25101.1, 25102.1, and 25230.1, need not file another. Service may  
4 be made by leaving a copy of the process in the office of the  
5 commissioner but it is not effective unless (1) the plaintiff, who  
6 may be the commissioner in a suit, action or proceeding instituted  
7 by him or her, forthwith sends notice of the service and a copy of  
8 the process by registered or certified mail to the defendant or  
9 respondent at the last address on file with the commissioner, and  
10 (2) the plaintiff's affidavit of compliance with this section is filed  
11 in the case on or before the return day of the process, if any, or  
12 within such further time as the court allows.

13 *SEC. 3. Section 25166.5 is added to the Corporations Code,*  
14 *to read:*

15 *25166.5. (a) Notwithstanding any other provision of law, it is*  
16 *unlawful for any person to knowingly alter, destroy, mutilate,*  
17 *conceal, cover up, falsify, or make a false entry in any record,*  
18 *document, or tangible object with the intent to impede, obstruct,*  
19 *or influence the administration or enforcement of any provision*  
20 *of this division.*

21 *(b) Notwithstanding any other provision of law, it is unlawful*  
22 *for any person to knowingly make an untrue statement to the*  
23 *commissioner during the course of licensing, an investigation or*  
24 *examination.*

25 *(c) Any person who violates any provision of this section shall*  
26 *be liable for any administrative, civil, or criminal penalty*  
27 *authorized by law.*

28 *SEC. 4. Section 25213.4 is added to the Corporations Code,*  
29 *to read:*

30 *25213.4. (a) Notwithstanding Section 25213 or any other*  
31 *provision of law, the commissioner may issue an order suspending*  
32 *or removing a subject person of a broker-dealer from his or her*  
33 *office with the broker-dealer or from control of the broker-dealer*  
34 *and prohibiting the subject person from further participating in*  
35 *any manner in the conduct of the business of the broker-dealer,*  
36 *except with the prior consent of the commissioner, if, after notice*  
37 *and opportunity for a hearing, the commissioner finds the*  
38 *following:*

39 *(1) (A) The subject person has violated any provision of this*  
40 *division or of any regulation or order issued under this division,*



1 *or any provision of any other applicable law relating to the*  
2 *business of the broker-dealer; or*

3 *(B) The subject person has engaged or participated in any*  
4 *unsafe or unsound act with respect to the business of the*  
5 *broker-dealer; or*

6 *(C) The subject person has committed or engaged in any act*  
7 *which constitutes a breach of his or her fiduciary duty as a subject*  
8 *person; and*

9 *(2) (A) The broker-dealer has suffered or will probably suffer*  
10 *substantial financial loss or other damage by reason of that*  
11 *violation, act, or breach of fiduciary duty; or*

12 *(B) The interests of the broker-dealer's clients have been or are*  
13 *likely to be seriously prejudiced by reason of the violation, act, or*  
14 *breach of fiduciary duty; or*

15 *(C) The subject person has received financial gain by reason*  
16 *of that violation, act, or breach of fiduciary duty; and*

17 *(3) The violation, act, or breach of fiduciary duty is one*  
18 *involving personal dishonesty on the part of the subject person or*  
19 *one that demonstrates a willful or continuing disregard for the*  
20 *safety or soundness of the broker-dealer's business.*

21 *(b) The commissioner may issue an order suspending or*  
22 *removing a subject person of a broker-dealer from his or her office*  
23 *with the broker-dealer or from control of the broker-dealer and*  
24 *prohibiting the subject person from further participating in any*  
25 *manner in the conduct of the business of the broker-dealer, except*  
26 *with the prior consent of the commissioner, if, after notice and*  
27 *opportunity for a hearing, the commissioner finds the following:*

28 *(1) The subject person's conduct or practice with respect to*  
29 *another broker-dealer or business institution has resulted in*  
30 *substantial financial loss or other damage; and*

31 *(2) The conduct or practice has evidenced personal dishonesty*  
32 *or willful or continuing disregard for the safety and soundness of*  
33 *the other broker-dealer or business institution; and*

34 *(3) The conduct or practice is relevant in that it demonstrates*  
35 *unfitness to continue as a subject person of the broker-dealer.*

36 *(c) The commissioner may immediately issue an order*  
37 *suspending or removing a subject person of a broker-dealer from*  
38 *his or her office with the broker-dealer or from control of the*  
39 *broker-dealer and prohibiting the subject person from further*  
40 *participating in any manner in the conduct of the business of the*

1 *broker-dealer, except with the prior consent of the commissioner,*  
2 *if the commissioner finds and gives the subject person notice of*  
3 *the following:*

4 *(1) It is necessary for the protection of the broker-dealer or the*  
5 *interests of the broker-dealer's clients that the commissioner issue*  
6 *the order immediately, and*

7 *(2) (A) Any of the factors set forth in paragraphs (1) and (2)*  
8 *of subdivision (a) and any of the factors set forth in paragraph (3)*  
9 *of subdivision (b) are true with respect to the subject person; or*

10 *(B) That any of the factors set forth in paragraphs (1), (2), and*  
11 *(3) of subdivision (b), and the factor set forth in paragraph (3) of*  
12 *subdivision (b) are true with respect to the subject person.*

13 *(d) (1) The commissioner may immediately issue an order*  
14 *suspending or removing a subject person of a broker-dealer from*  
15 *his or her office with the broker-dealer or from control of the*  
16 *broker-dealer and prohibiting the subject person from further*  
17 *participating in any manner in the conduct of the business of the*  
18 *broker-dealer, except with the prior consent of the commissioner,*  
19 *if the commissioner finds and gives the subject person notice of*  
20 *the following:*

21 *(A) The subject person has been charged in an indictment issued*  
22 *by a grand jury or in an information, complaint, or similar*  
23 *pleading issued by a United States attorney, district attorney, or*  
24 *other governmental official or agency authorized to prosecute*  
25 *crimes, with a crime that is punishable by imprisonment for a term*  
26 *exceeding one year and that involves dishonesty or breach of trust;*  
27 *and*

28 *(B) The person's continuing to serve as a subject person of the*  
29 *broker-dealer may pose a material threat to the interest of the*  
30 *broker-dealer's clients or may threaten to materially impair public*  
31 *confidence in the broker-dealer. In case the criminal proceedings*  
32 *are terminated other than by a judgment of conviction the order*  
33 *shall be deemed rescinded.*

34 *(2) The commissioner may immediately issue an order*  
35 *suspending or removing a subject person of a broker-dealer, or a*  
36 *former subject of a broker-dealer, from his or her office with the*  
37 *broker-dealer or from control of the broker-dealer and prohibiting*  
38 *the person from further participating in any manner in the conduct*  
39 *of the business of the broker-dealer, except with the prior consent*

1 *of the commissioner, if the commissioner finds and gives the subject*  
2 *person notice of the following:*

3 *(A) The person has been finally convicted of a crime which is*  
4 *punishable by imprisonment for a term exceeding one year and*  
5 *which involves dishonesty or breach of trust; and*

6 *(B) The person's continuing to serve or resumption of service*  
7 *as a subject person of the broker-dealer may pose a material threat*  
8 *to the interests of the broker-dealer's clients or may threaten to*  
9 *materially impair public confidence in the broker-dealer.*

10 *(3) The fact that a subject person of a broker-dealer charged*  
11 *with a crime involving dishonesty or breach of trust is not finally*  
12 *convicted of that crime shall not preclude the commissioner from*  
13 *issuing an order regarding the subject person pursuant to other*  
14 *provisions of this division.*

15 *(e) Within 30 days after an order is issued pursuant to*  
16 *subdivision (c) or (d), the person to whom the order is issued may*  
17 *file an application for a hearing.*

18 *(f) Any person to whom an order is issued under subdivision*  
19 *(a), (b), (c), or (d) may apply to the commissioner to modify or*  
20 *rescind that order. The commissioner shall not grant that*  
21 *application unless the commissioner finds that it is in the public*  
22 *interest to do so and that it is reasonable to believe that the person*  
23 *will, if and when he or she becomes a subject person of a*  
24 *broker-dealer, comply with all applicable provisions of the*  
25 *applicable law and of any regulation or order issued thereunder.*

26 *(g) (1) It is unlawful for any subject person of a broker-dealer*  
27 *or former subject person of a broker-dealer to whom an order is*  
28 *issued under subdivision (a), (b), (c), or (d) to do any of the*  
29 *following, except with the prior consent of the commissioner, so*  
30 *long as the order is effective:*

31 *(A) To serve or act as a officer, director, 10 percent or more*  
32 *shareholder, managing member, or general partner of any*  
33 *broker-dealer.*

34 *(B) To vote any shares or other securities of a broker-dealer*  
35 *having voting rights for the election of any person as a director*  
36 *of a broker-dealer.*

37 *(C) Directly or indirectly, to solicit, procure, or transfer or*  
38 *attempt to transfer, or vote any proxy, consent, or authorization*  
39 *with respect to any shares or other securities of any broker-dealer*  
40 *having voting rights.*

1     (D) Otherwise to participate in any manner in the conduct of  
2     the business of any broker-dealer.

3     (2) Any person who violates paragraph (1) shall, upon  
4     conviction, be punished by a fine of not more than ten thousand  
5     dollars (\$10,000) or imprisoned in the state prison, or in a county  
6     jail not to exceed one year, or by both such fine and imprisonment.

7     (3) If the commissioner believes that any person has violated  
8     paragraph (1), the commissioner may bring an action in a court  
9     of competent jurisdiction petitioning the court to assess that person  
10    a civil penalty in an amount as the commissioner may specify;  
11    provided, however, that the amount of the civil penalty shall not  
12    exceed two thousand five hundred dollars (\$2,500) for each  
13    violation or, in the case of a continuing violation, two thousand  
14    five hundred dollars (\$2,500) for each day for which the violation  
15    continues.

16    In determining the amount of a civil penalty to be assessed under  
17    this paragraph, the court shall consider the financial resources  
18    and good faith of the person charged, the gravity of the violation,  
19    the history of previous violations by the person, and such other  
20    factors as in the opinion of the court may be relevant.

21    (h) A hearing held pursuant to this section shall be private  
22    unless the commissioner, in his or her discretion, after fully  
23    considering the views of the parties, determines that a public  
24    hearing is necessary to protect the public interest.

25    (i) For purposes of this section, "subject person" means any  
26    officer, director, 10 percent or more shareholder, managing  
27    member, or general partner.

28    SEC. 5. Section 25232.4 is added to the Corporations Code,  
29    to read:

30    25232.4. (a) Notwithstanding any other provision of law, the  
31    commissioner may issue an order suspending or removing a subject  
32    person of an investment adviser from his or her office with the  
33    investment adviser or from control of the investment adviser and  
34    prohibiting the subject person from further participating in any  
35    manner in the conduct of the business of the investment adviser;  
36    except with the prior consent of the commissioner, if, after notice  
37    and opportunity for a hearing, the commissioner finds the  
38    following:

39    (1) (A) The subject person has violated any provision of this  
40    division or of any regulation or order issued under this division,

1 *or any provision of any other applicable law relating to the*  
2 *business of an investment adviser; or*

3 *(B) The subject person has engaged or participated in any*  
4 *unsafe or unsound act with respect to the business of the investment*  
5 *adviser; or*

6 *(C) The subject person has committed or engaged in any act*  
7 *which constitutes a breach of his or her fiduciary duty as a subject*  
8 *person; and*

9 *(2) (A) The investment adviser has suffered or will probably*  
10 *suffer substantial financial loss or other damage by reason of that*  
11 *violation, act, or breach of fiduciary duty; or*

12 *(B) The interests of the investment adviser's clients have been*  
13 *or are likely to be seriously prejudiced by reason of the violation,*  
14 *act, or breach of fiduciary duty; or*

15 *(C) The subject person has received financial gain by reason*  
16 *of that violation, act, or breach of fiduciary duty; and*

17 *(3) The violation, act, or breach of fiduciary duty is one*  
18 *involving personal dishonesty on the part of the subject person or*  
19 *one that demonstrates a willful or continuing disregard for the*  
20 *safety or soundness of the investment adviser's business.*

21 *(b) The commissioner may issue an order suspending or*  
22 *removing a subject person of an investment adviser from his or*  
23 *her office with the investment adviser or from control of the*  
24 *investment adviser and prohibiting the subject person from further*  
25 *participating in any manner in the conduct of the business of the*  
26 *investment adviser, except with the prior consent of the*  
27 *commissioner, if, after notice and opportunity for a hearing, the*  
28 *commissioner finds the following:*

29 *(1) The subject person's conduct or practice with respect to*  
30 *another investment adviser or business institution has resulted in*  
31 *substantial financial loss or other damage; and*

32 *(2) The conduct or practice has evidenced personal dishonesty*  
33 *or willful or continuing disregard for the safety and soundness of*  
34 *the other investment adviser or business institution; and*

35 *(3) The conduct or practice is relevant in that it demonstrates*  
36 *unfitness to continue as a subject person of the investment adviser.*

37 *(c) The commissioner may immediately issue an order*  
38 *suspending or removing a subject person of an investment adviser*  
39 *from his or her office with the investment adviser or from control*  
40 *of the investment adviser and prohibiting the subject person from*

1 further participating in any manner in the conduct of the business  
2 of the investment adviser, except with the prior consent of the  
3 commissioner, if the commissioner finds and gives the subject  
4 person notice of the following:

5 (1) It is necessary for the protection of the investment adviser  
6 or the interests of the investment adviser's clients that the  
7 commissioner issue the order immediately, and

8 (2) (A) Any of the factors set forth in paragraphs (1) and (2)  
9 of subdivision (a) and any of the factors set forth in paragraph (3)  
10 of subdivision (b) are true with respect to the subject person; or

11 (B) Any of the factors set forth in paragraphs (1), (2), and (3)  
12 of subdivision (b), and the factor set forth in paragraph (3) of  
13 subdivision (b) are true with respect to the subject person.

14 (d) (1) The commissioner may immediately issue an order  
15 suspending or removing a subject person of an investment adviser  
16 from his or her office with the investment adviser or from control  
17 of the investment adviser and prohibiting the subject person from  
18 further participating in any manner in the conduct of the business  
19 of the investment adviser, except with the prior consent of the  
20 commissioner, if the commissioner finds and gives the subject  
21 person notice of the following:

22 (A) The subject person has been charged in an indictment issued  
23 by a grand jury or in an information, complaint, or similar  
24 pleading issued by a United States attorney, district attorney, or  
25 other governmental official or agency authorized to prosecute  
26 crimes, with a crime that is punishable by imprisonment for a term  
27 exceeding one year and that involves dishonesty or breach of trust;  
28 and

29 (B) The person's continuing to serve as a subject person of the  
30 investment adviser may pose a material threat to the interest of  
31 the investment adviser's clients or may threaten to materially  
32 impair public confidence in the investment adviser. In case the  
33 criminal proceedings are terminated other than by a judgment of  
34 conviction the order shall be deemed rescinded.

35 (2) The commissioner may immediately issue an order  
36 suspending or removing a subject person of an investment adviser  
37 or a former subject of an investment adviser, from his or her office  
38 with the investment adviser or from control of the investment  
39 adviser and prohibiting the person from further participating in  
40 any manner in the conduct of the business of the investment adviser;

1 *except with the prior consent of the commissioner, if the*  
2 *commissioner finds and gives the subject person notice of the*  
3 *following:*

4 *(A) The person has been finally convicted of a crime that is*  
5 *punishable by imprisonment for a term exceeding one year and*  
6 *that involves dishonesty or breach of trust; and*

7 *(B) The person's continuing to serve or resumption of service*  
8 *as a subject person of the investment adviser may pose a material*  
9 *threat to the interests of the investment adviser's clients or may*  
10 *threaten to materially impair public confidence in the investment*  
11 *adviser.*

12 *(3) The fact that a subject person of an investment adviser*  
13 *charged with a crime involving dishonesty or breach of trust is*  
14 *not finally convicted of that crime shall not preclude the*  
15 *commissioner from issuing an order regarding the subject person*  
16 *pursuant to other provisions of this division.*

17 *(e) Within 30 days after an order is issued pursuant to*  
18 *subdivision (c) or (d), the person to whom the order is issued may*  
19 *file an application for a hearing.*

20 *(f) Any person to whom an order is issued under subdivision*  
21 *(a), (b), (c), or (d) may apply to the commissioner to modify or*  
22 *rescind that order. The commissioner shall not grant that*  
23 *application unless the commissioner finds that it is in the public*  
24 *interest to do so and that it is reasonable to believe that the person*  
25 *will, if and when he or she becomes a subject person of an*  
26 *investment adviser, comply with all applicable provisions of the*  
27 *applicable law and of any regulation or order issued thereunder.*

28 *(g) (1) It is unlawful for any subject person of an investment*  
29 *adviser or former subject person of an investment adviser to whom*  
30 *an order is issued under subdivision (a), (b), (c), or (d) to do any*  
31 *of the following, except with the prior consent of the commissioner,*  
32 *so long as the order is effective:*

33 *(A) To serve or act as a officer, director, 10 percent or more*  
34 *shareholder, managing member, or general partner of any*  
35 *investment adviser.*

36 *(B) To vote any shares or other securities of an investment*  
37 *adviser having voting rights, for the election of any person as a*  
38 *director of an investment adviser.*

39 *(C) Directly or indirectly, to solicit, procure, or transfer or*  
40 *attempt to transfer, or vote any proxy, consent, or authorization*

1 *with respect to any shares or other securities of any investment*  
2 *adviser having voting rights.*

3 *(D) Otherwise to participate in any manner in the conduct of*  
4 *the business of any investment adviser.*

5 *(2) Any person who violates paragraph (1) shall, upon*  
6 *conviction, be punished by a fine of not more than ten thousand*  
7 *dollars (\$10,000) or imprisoned in the state prison, or in a county*  
8 *jail not to exceed one year, or by both such fine and imprisonment.*

9 *(3) If the commissioner believes that any person has violated*  
10 *paragraph (1), the commissioner may bring an action in a court*  
11 *of competent jurisdiction petitioning the court to assess that person*  
12 *a civil penalty in an amount as the commissioner may specify;*  
13 *provided, however, that the amount of the civil penalty shall not*  
14 *exceed two thousand five hundred dollars (\$2,500) for each*  
15 *violation or, in the case of a continuing violation, two thousand*  
16 *five hundred dollars (\$2,500) for each day for which the violation*  
17 *continues.*

18 *In determining the amount of a civil penalty to be assessed under*  
19 *this paragraph, the court shall consider the financial resources*  
20 *and good faith of the person charged, the gravity of the violation,*  
21 *the history of previous violations by the person, and such other*  
22 *factors as in the opinion of the court may be relevant.*

23 *(h) A hearing held pursuant to this section shall be private*  
24 *unless the commissioner, in his or her discretion, after fully*  
25 *considering the views of the parties, determines that a public*  
26 *hearing is necessary to protect the public interest.*

27 *(i) For purposes of this section, "subject person" means any*  
28 *officer, director, 10 percent or more shareholder, managing*  
29 *member, or general partner.*

30 *SEC. 6. Section 25245.5 is added to the Corporations Code,*  
31 *to read:*

32 *25245.5. (a) Notwithstanding any other provision of law, it is*  
33 *unlawful for any person to knowingly alter, destroy, mutilate,*  
34 *conceal, cover up, falsify, or make a false entry in any record,*  
35 *document, or tangible object with the intent to impede, obstruct,*  
36 *or influence the administration or enforcement of any provision*  
37 *of this division.*

38 *(b) Notwithstanding any other provision of law, it is unlawful*  
39 *for any person to knowingly make an untrue statement to the*



1 *commissioner during the course of licensing, an investigation or*  
2 *examination.*

3 *(c) Any person who violates any provision of this section shall*  
4 *be liable for any administrative, civil, or criminal penalty*  
5 *authorized by law.*

6 *SEC. 7. Section 31155 of the Corporations Code is amended*  
7 *to read:*

8 31155. Every applicant for registration of an offer to sell  
9 franchises under this law, by other than a California corporation,  
10 *California limited partnership, or California limited liability*  
11 *company*, shall file with the commissioner, in such form as he by  
12 rule prescribed, an irrevocable consent appointing the  
13 commissioner or his successor in office to be his attorney to receive  
14 service of any lawful process in any noncriminal suit, action or  
15 proceeding against him or his successor, executor or administrator,  
16 which arises under this law or any rule or order hereunder after  
17 the consent has been filed, with the same force and validity as if  
18 served personally on the person filing the consent. A person who  
19 has filed such a consent in connection with a previous registration  
20 under this law need not file another. Service may be made by  
21 leaving a copy of the process in the office of the commissioner  
22 but it is not effective unless (a) the plaintiff, who may be the  
23 commissioner in a suit, action or proceeding instituted by him,  
24 forthwith sends notice of the service and a copy of the process by  
25 registered or certified mail to the defendant or respondent at his  
26 last address on file with the commissioner, and (b) the plaintiff's  
27 affidavit of compliance with this section is filed in the case on or  
28 before the return day of the process, if any, or within such further  
29 time as the court allows.

30 *SEC. 8. Section 31204 is added to the Corporations Code, to*  
31 *read:*

32 31204. (a) *Notwithstanding any other provision of law, it is*  
33 *unlawful for any person to knowingly alter, destroy, mutilate,*  
34 *conceal, cover up, falsify, or make a false entry in any record,*  
35 *document, or tangible object with the intent to impede, obstruct,*  
36 *or influence the administration or enforcement of any provision*  
37 *of this division.*

38 (b) *Notwithstanding any other provision of law, it is unlawful*  
39 *for any person to knowingly make an untrue statement to the*

1 commissioner during the course of licensing, an investigation or  
2 examination.

3 (c) Any person who violates any provision of this section shall  
4 be liable for any administrative, civil, or criminal penalty  
5 authorized by law.

6 SEC. 9. Section 31409 is added to the Corporations Code, to  
7 read:

8 31409. (a) Notwithstanding any other provision of law, the  
9 commissioner may issue an order suspending or removing a subject  
10 person of a franchisor from his or her office with the franchisor  
11 or from control of the franchisor and prohibiting the subject person  
12 from further participating in any manner in the conduct of the  
13 business of the franchisor, except with the prior consent of the  
14 commissioner, if, after notice and opportunity for a hearing, the  
15 commissioner finds the following:

16 (1) (A) The subject person has violated any provision of this  
17 division or of any regulation or order issued under this division,  
18 or any provision of any other applicable law relating to the  
19 business of a franchisor; or

20 (B) The subject person has engaged or participated in any  
21 unsafe or unsound act with respect to the business of the  
22 franchisor; or

23 (C) The subject person has committed or engaged in any act  
24 that constitutes a breach of his or her fiduciary duty as a subject  
25 person; and

26 (2) (A) The franchisor has suffered or will probably suffer  
27 substantial financial loss or other damage by reason of that  
28 violation, act, or breach of fiduciary duty; or

29 (B) The interests of the franchisor's customers have been or  
30 are likely to be seriously prejudiced by reason of the violation,  
31 act, or breach of fiduciary duty; or

32 (C) The subject person has received financial gain by reason  
33 of that violation, act, or breach of fiduciary duty; and

34 (3) The violation, act, or breach of fiduciary duty is one  
35 involving personal dishonesty on the part of the subject person or  
36 one that demonstrates a willful or continuing disregard for the  
37 safety or soundness of the franchisor's business.

38 (b) The commissioner may issue an order suspending or  
39 removing a subject person of a franchisor from his or her office  
40 with the franchisor or from control of the franchisor and

1 *prohibiting the subject person from further participating in any*  
2 *manner in the conduct of the business of the franchisor, except*  
3 *with the prior consent of the commissioner, if, after notice and*  
4 *opportunity for a hearing, the commissioner finds the following:*

5 *(1) The subject person's conduct or practice with respect to*  
6 *another franchisor or business institution has resulted in*  
7 *substantial financial loss or other damage; and*

8 *(2) The conduct or practice has evidenced personal dishonesty*  
9 *or willful or continuing disregard for the safety and soundness of*  
10 *the other franchisor or business institution; and*

11 *(3) The conduct or practice is relevant in that it demonstrates*  
12 *unfitness to continue as a subject person of the franchisor.*

13 *(c) The commissioner may immediately issue an order*  
14 *suspending or removing a subject person of a franchisor from his*  
15 *or her office with the franchisor or from control of the franchisor*  
16 *and prohibiting the subject person from further participating in*  
17 *any manner in the conduct of the business of the franchisor, except*  
18 *with the prior consent of the commissioner, if the commissioner*  
19 *finds and provides the subject person notice of the following:*

20 *(1) It is necessary for the protection of the franchisor or the*  
21 *interests of the franchisor's clients that the commissioner issue*  
22 *the order immediately, and*

23 *(2) (A) Any of the factors set forth in paragraphs (1) and (2)*  
24 *of subdivision (a) and any of the factors set forth in paragraph (3)*  
25 *of subdivision (b) are true with respect to the subject person; or*

26 *(B) Any of the factors set forth in paragraphs (1), (2), and (3)*  
27 *of subdivision (b), and the factor set forth in paragraph (3) of*  
28 *subdivision (b) are true with respect to the subject person.*

29 *(d) (1) The commissioner may immediately issue an order*  
30 *suspending or removing a subject person of a franchisor from his*  
31 *or her office with the franchisor or from control of the franchisor*  
32 *and prohibiting the subject person from further participating in*  
33 *any manner in the conduct of the business of the franchisor, except*  
34 *with the prior consent of the commissioner, if the commissioner*  
35 *finds and provides the subject person notice of the following:*

36 *(A) The subject person has been charged in an indictment issued*  
37 *by a grand jury or in an information, complaint, or similar*  
38 *pleading issued by a United States attorney, district attorney, or*  
39 *other governmental official or agency authorized to prosecute*  
40 *crimes, with a crime that is punishable by imprisonment for a term*

1 *exceeding one year and that involves dishonesty or breach of trust;*  
2 *and*

3 *(B) The person's continuing to serve as a subject person of the*  
4 *franchisor may pose a material threat to the interest of the*  
5 *franchisor's clients or may threaten to materially impair public*  
6 *confidence in the franchisor. In case the criminal proceedings are*  
7 *terminated other than by a judgment of conviction the order shall*  
8 *be deemed rescinded.*

9 *(2) The commissioner may immediately issue an order*  
10 *suspending or removing a subject person of a franchisor, or a*  
11 *former subject person of a franchisor, from his or her office with*  
12 *the franchisor or from control of the franchisor and prohibiting*  
13 *the person from further participating in any manner in the conduct*  
14 *of the business of the franchisor, except with the prior consent of*  
15 *the commissioner, if the commissioner finds and gives the subject*  
16 *person notice of the following:*

17 *(A) The person has been finally convicted of a crime that is*  
18 *punishable by imprisonment for a term exceeding one year and*  
19 *that involves dishonesty or breach of trust; and*

20 *(B) The person's continuing to serve or resumption of service*  
21 *as a subject person of the franchisor may pose a material threat*  
22 *to the interests of the franchisor's clients or may threaten to*  
23 *materially impair public confidence in the franchisor.*

24 *(3) The fact that a subject person of a licensee charged with a*  
25 *crime involving dishonesty or breach of trust is not finally*  
26 *convicted of that crime shall not preclude the commissioner from*  
27 *issuing an order regarding the subject person pursuant to other*  
28 *provisions of this division.*

29 *(e) Within 30 days after an order is issued pursuant to*  
30 *subdivision (c) or (d), the person to whom the order is issued may*  
31 *file an application for a hearing.*

32 *(f) Any person to whom an order is issued under subdivision*  
33 *(a), (b), (c), or (d) may apply to the commissioner to modify or*  
34 *rescind that order. The commissioner shall not grant that*  
35 *application unless the commissioner finds that it is in the public*  
36 *interest to do so and that it is reasonable to believe that the person*  
37 *will, if and when he or she becomes a subject person of a*  
38 *franchisor, comply with all applicable provisions of the applicable*  
39 *law and of any regulation or order issued thereunder.*

1     (g) (1) *It is unlawful for any subject person of a franchisor or*  
2 *former subject person of a franchisor to whom an order is issued*  
3 *under subdivision (a), (b), (c), or (d) to do any of the following,*  
4 *except with the prior consent of the commissioner, so long as the*  
5 *order is effective:*

6     (A) *To serve or act as a officer, director, 10 percent or more*  
7 *shareholder, managing member, or general partner of any*  
8 *franchisor.*

9     (B) *To vote any shares or other securities of a franchisor having*  
10 *voting rights, for the election of any person as a director of a*  
11 *franchisor.*

12     (C) *Directly or indirectly, to solicit, procure, or transfer or*  
13 *attempt to transfer, or vote any proxy, consent, or authorization*  
14 *with respect to any shares or other securities of any franchisor*  
15 *having voting rights.*

16     (D) *Otherwise to participate in any manner in the conduct of*  
17 *the business of any franchisor.*

18     (2) *Any person who violates paragraph (1) shall, upon*  
19 *conviction, be punished by a fine of not more than ten thousand*  
20 *dollars (\$10,000) or imprisoned in the state prison, or in a county*  
21 *jail not to exceed one year, or by both such fine and imprisonment.*

22     (3) *If the commissioner believes that any person has violated*  
23 *paragraph (1), the commissioner may bring an action in a court*  
24 *of competent jurisdiction petitioning the court to assess that person*  
25 *a civil penalty in an amount as the commissioner may specify;*  
26 *provided, however, that the amount of the civil penalty shall not*  
27 *exceed two thousand five hundred dollars (\$2,500) for each*  
28 *violation or, in the case of a continuing violation, two thousand*  
29 *five hundred dollars (\$2,500) for each day for which the violation*  
30 *continues.*

31     *In determining the amount of a civil penalty to be assessed under*  
32 *this paragraph, the court shall consider the financial resources*  
33 *and good faith of the person charged, the gravity of the violation,*  
34 *the history of previous violations by the person, and such other*  
35 *factors as in the opinion of the court may be relevant.*

36     (h) *A hearing held pursuant to this section shall be private*  
37 *unless the commissioner, in his or her discretion, after fully*  
38 *considering the views of the parties, determines that a public*  
39 *hearing is necessary to protect the public interest.*

1     (i) For purposes of this section, “subject person” means any  
2 officer, director, 10 percent or more shareholder, managing  
3 member, or general partner.

4     SEC. 10. Section 12332 is added to the Financial Code, to  
5 read:

6     12332. (a) Notwithstanding any other provision of law, it is  
7 unlawful for any person to knowingly alter, destroy, mutilate,  
8 conceal, cover up, falsify, or make a false entry in any record,  
9 document, or tangible object with the intent to impede, obstruct,  
10 or influence the administration or enforcement of any provision  
11 of this division.

12     (b) Notwithstanding any other provision of law, it is unlawful  
13 for any person to knowingly make an untrue statement to the  
14 commissioner during the course of licensing, an investigation or  
15 examination.

16     (c) Any person who violates any provision of this section shall  
17 be liable for any administrative, civil, or criminal penalty  
18 authorized by law.

19     SEC. 11. Section 12404 is added to the Financial Code, to  
20 read:

21     12404. (a) Notwithstanding any other provision of law, the  
22 commissioner may issue an order suspending or removing a subject  
23 person of a licensee from his or her office with the licensee or from  
24 control of the licensee and prohibiting the subject person from  
25 further participating in any manner in the conduct of the business  
26 of the licensee, except with the prior consent of the commissioner,  
27 if, after notice and opportunity for a hearing, the commissioner  
28 finds the following:

29     (1) (A) The subject person has violated any provision of this  
30 division or of any regulation or order issued under this division,  
31 or any provision of any other applicable law relating to the  
32 business of a licensee; or

33     (B) The subject person has engaged or participated in any  
34 unsafe or unsound act with respect to the business of the licensee;  
35 or

36     (C) The subject person has committed or engaged in any act  
37 which constitutes a breach of his or her fiduciary duty as a subject  
38 person; and

1     (2) (A) *The licensee has suffered or will probably suffer*  
2 *substantial financial loss or other damage by reason of that*  
3 *violation, act, or breach of fiduciary duty; or*

4     (B) *The interests of the licensee's customers have been or are*  
5 *likely to be seriously prejudiced by reason of the violation, act, or*  
6 *breach of fiduciary duty; or*

7     (C) *The subject person has received financial gain by reason*  
8 *of that violation, act, or breach of fiduciary duty; and*

9     (3) *The violation, act, or breach of fiduciary duty is one*  
10 *involving personal dishonesty on the part of the subject person or*  
11 *one that demonstrates a willful or continuing disregard for the*  
12 *safety or soundness of the licensee's business.*

13     (b) *The commissioner may issue an order suspending or*  
14 *removing a subject person of a licensee from his or her office with*  
15 *the licensee or from control of the licensee and prohibiting the*  
16 *subject person from further participating in any manner in the*  
17 *conduct of the business of the licensee, except with the prior*  
18 *consent of the commissioner, if, after notice and opportunity for*  
19 *a hearing, the commissioner finds the following:*

20     (1) *The subject person's conduct or practice with respect to*  
21 *another licensee or business institution has resulted in substantial*  
22 *financial loss or other damage; and*

23     (2) *The conduct or practice has evidenced personal dishonesty*  
24 *or willful or continuing disregard for the safety and soundness of*  
25 *the other licensee or business institution; and*

26     (3) *The conduct or practice is relevant in that it demonstrates*  
27 *unfitness to continue as a subject person of the licensee.*

28     (c) *The commissioner may immediately issue an order*  
29 *suspending or removing a subject person of a licensee from his or*  
30 *her office with the licensee or from control of the licensee and*  
31 *prohibiting the subject person from further participating in any*  
32 *manner in the conduct of the business of the licensee, except with*  
33 *the prior consent of the commissioner, if the commissioner finds*  
34 *and provides the subject person notice of the following:*

35     (1) *It is necessary for the protection of the licensee or the*  
36 *interests of the licensee's clients that the commissioner issue the*  
37 *order immediately, and*

38     (2) (A) *Any of the factors set forth in paragraphs (1) and (2)*  
39 *of subdivision (a) and any of the factors set forth in paragraph (3)*  
40 *of subdivision (b) are true with respect to the subject person; or*

1     (B) Any of the factors set forth in paragraphs (1), (2), and (3)  
2     of subdivision (b), and the factor set forth in paragraph (3) of  
3     subdivision (b) are true with respect to the subject person.

4     (d) (1) The commissioner may immediately issue an order  
5     suspending or removing a subject person of a licensee from his or  
6     her office with the licensee or from control of the licensee and  
7     prohibiting the subject person from further participating in any  
8     manner in the conduct of the business of the licensee, except with  
9     the prior consent of the commissioner, if the commissioner finds  
10    and gives the subject person notice of the following:

11    (A) The subject person has been charged in an indictment issued  
12    by a grand jury or in an information, complaint, or similar  
13    pleading issued by a United States attorney, district attorney, or  
14    other governmental official or agency authorized to prosecute  
15    crimes, with a crime which is punishable by imprisonment for a  
16    term exceeding one year and which involves dishonesty or breach  
17    of trust; and

18    (B) The person's continuing to serve as a subject person of the  
19    licensee may pose a material threat to the interest of the licensee's  
20    clients or may threaten to materially impair public confidence in  
21    the licensee. In case the criminal proceedings are terminated other  
22    than by a judgment of conviction the order shall be deemed  
23    rescinded.

24    (2) The commissioner may immediately issue an order  
25    suspending or removing a subject person of a licensee or a former  
26    subject of a licensee, from his or her office with the licensee or  
27    from control of the licensee, and prohibiting the person from  
28    further participating in any manner in the conduct of the business  
29    of the licensee, except with the prior consent of the commissioner,  
30    if the commissioner finds and gives the subject person notice of  
31    the following:

32    (A) The person has been finally convicted of a crime that is  
33    punishable by imprisonment for a term exceeding one year and  
34    that involves dishonesty or breach of trust; and

35    (B) The person's continuing to serve or resumption of service  
36    as a subject person of the licensee may pose a material threat to  
37    the interests of the licensee's clients or may threaten to materially  
38    impair public confidence in the licensee.

39    (3) The fact that a subject person of a licensee charged with a  
40    crime involving dishonesty or breach of trust is not finally



1 convicted of that crime shall not preclude the commissioner from  
2 issuing an order regarding the subject person pursuant to other  
3 provisions of this division.

4 (e) Within 30 days after an order is issued pursuant to  
5 subdivision (c) or (d), the person to whom the order is issued may  
6 file an application for a hearing.

7 (f) Any person to whom an order is issued under subdivision  
8 (a), (b), (c), or (d) may apply to the commissioner to modify or  
9 rescind that order. The commissioner shall not grant that  
10 application unless the commissioner finds that it is in the public  
11 interest to do so and that it is reasonable to believe that the person  
12 will, if and when he or she becomes a subject person of a licensee,  
13 comply with all applicable provisions of the applicable law and  
14 of any regulation or order issued thereunder.

15 (g) (1) It is unlawful for any subject person of a licensee or  
16 former subject person of a licensee to whom an order is issued  
17 under subdivision (a), (b), (c), or (d) to do any of the following,  
18 except with the prior consent of the commissioner, so long as the  
19 order is effective:

20 (A) To serve or act as a officer, director, 10 percent or more  
21 shareholder, managing member, or general partner of any licensee.

22 (B) To vote any shares or other securities of a licensee having  
23 voting rights, for the election of any person as a director of a  
24 licensee.

25 (C) Directly or indirectly, to solicit, procure, or transfer or  
26 attempt to transfer, or vote any proxy, consent, or authorization  
27 with respect to any shares or other securities of any licensee having  
28 voting rights.

29 (D) Otherwise to participate in any manner in the conduct of  
30 the business of any licensee.

31 (2) Any person who violates paragraph (1) shall, upon  
32 conviction, be punished by a fine of not more than ten thousand  
33 dollars (\$10,000) or imprisoned in the state prison, or in a county  
34 jail not to exceed one year, or by both such fine and imprisonment.

35 (3) If the commissioner believes that any person has violated  
36 paragraph (1), the commissioner may bring an action in a court  
37 of competent jurisdiction petitioning the court to assess that person  
38 a civil penalty in an amount as the commissioner may specify;  
39 provided, however, that the amount of the civil penalty shall not  
40 exceed two thousand five hundred dollars (\$2,500) for each

1 violation or, in the case of a continuing violation, two thousand  
2 five hundred dollars (\$2,500) for each day for which the violation  
3 continues.

4 In determining the amount of a civil penalty to be assessed under  
5 this paragraph, the court shall consider the financial resources  
6 and good faith of the person charged, the gravity of the violation,  
7 the history of previous violations by the person, and such other  
8 factors as in the opinion of the court may be relevant.

9 (h) A hearing held pursuant to this section shall be private  
10 unless the commissioner, in his or her discretion, after fully  
11 considering the views of the parties, determines that a public  
12 hearing is necessary to protect the public interest.

13 (i) For purposes of this section, “subject person” means any  
14 officer, director, 10 percent or more shareholder, managing  
15 member, or general partner.

16 SEC. 12. Section 17423.2 is added to the Financial Code, to  
17 read:

18 17423.2. (a) Notwithstanding Section 17423 or any other  
19 provision of law, the commissioner may issue an order suspending  
20 or removing a subject person of a licensee from his or her office  
21 with the licensee or from control of the licensee and prohibiting  
22 the subject person from further participating in any manner in the  
23 conduct of the business of the licensee, except with the prior  
24 consent of the commissioner, if, after notice and an opportunity  
25 for a hearing, the commissioner finds the following:

26 (1) (A) The subject person has violated any provision of this  
27 division or of any regulation or order issued under this division,  
28 or any provision of any other applicable law relating to the  
29 business of a licensee; or

30 (B) The subject person has engaged or participated in any  
31 unsafe or unsound act with respect to the business of the licensee;  
32 or

33 (C) The subject person has committed or engaged in any act  
34 which constitutes a breach of his or her fiduciary duty as a subject  
35 person; and

36 (2) (A) The licensee has suffered or will probably suffer  
37 substantial financial loss or other damage by reason of that  
38 violation, act, or breach of fiduciary duty; or

1     (B) *The interests of the licensee's customers have been or are*  
2 *likely to be seriously prejudiced by reason of the violation, act, or*  
3 *breach of fiduciary duty; or*

4     (C) *The subject person has received financial gain by reason*  
5 *of that violation, act, or breach of fiduciary duty; and*

6     (3) *The violation, act, or breach of fiduciary duty is one*  
7 *involving personal dishonesty on the part of the subject person or*  
8 *one that demonstrates a willful or continuing disregard for the*  
9 *safety or soundness of the licensee's business.*

10    (b) *The commissioner may issue an order suspending or*  
11 *removing a subject person of a licensee from his or her office with*  
12 *the licensee or from control of the licensee and prohibiting the*  
13 *subject person from further participating in any manner in the*  
14 *conduct of the business of the licensee, except with the prior*  
15 *consent of the commissioner; if, after notice and opportunity for*  
16 *a hearing, the commissioner finds the following:*

17     (1) *The subject person's conduct or practice with respect to*  
18 *another licensee or business institution has resulted in substantial*  
19 *financial loss or other damage; and*

20     (2) *The conduct or practice has evidenced personal dishonesty*  
21 *or willful or continuing disregard for the safety and soundness of*  
22 *the other licensee or business institution; and*

23     (3) *That the conduct or practice is relevant in that it*  
24 *demonstrates unfitness to continue as a subject person of the*  
25 *licensee.*

26    (c) *The commissioner may immediately issue an order*  
27 *suspending or removing a subject person of a licensee from his or*  
28 *her office with the licensee or from control of the licensee and*  
29 *prohibiting the subject person from further participating in any*  
30 *manner in the conduct of the business of the licensee, except with*  
31 *the prior consent of the commissioner; if the commissioner finds*  
32 *and provides the subject person notice of the following:*

33     (1) *It is necessary for the protection of the licensee or the*  
34 *interests of the licensee's clients that the commissioner issue the*  
35 *order immediately, and*

36     (2) (A) *Any of the factors set forth in paragraphs (1) and (2)*  
37 *of subdivision (a) and any of the factors set forth in paragraph (3)*  
38 *of subdivision (b) are true with respect to the subject person; or*

1     (B) Any of the factors set forth in paragraphs (1), (2), and (3)  
2     of subdivision (b), and the factor set forth in paragraph (3) of  
3     subdivision (b) are true with respect to the subject person.

4     (d) (1) The commissioner may immediately issue an order  
5     suspending or removing a subject person of a licensee from his or  
6     her office with the licensee or from control of the licensee and  
7     prohibiting the subject person from further participating in any  
8     manner in the conduct of the business of the licensee, except with  
9     the prior consent of the commissioner, if the commissioner finds  
10    and gives the subject person notice of the following:

11    (A) The subject person has been charged in an indictment issued  
12    by a grand jury or in an information, complaint, or similar  
13    pleading issued by a United States attorney, district attorney, or  
14    other governmental official or agency authorized to prosecute  
15    crimes, with a crime that is punishable by imprisonment for a term  
16    exceeding one year and that involves dishonesty or breach of trust;  
17    and

18    (B) The person's continuing to serve as a subject person of the  
19    licensee may pose a material threat to the interest of the licensee's  
20    clients or may threaten to materially impair public confidence in  
21    the licensee. In case the criminal proceedings are terminated other  
22    than by a judgment of conviction the order shall be deemed  
23    rescinded.

24    (2) The commissioner may immediately issue an order  
25    suspending or removing a subject person of a licensee or a former  
26    subject of a licensee, from his or her office with the licensee or  
27    from control of the licensee, and prohibiting the person from  
28    further participating in any manner in the conduct of the business  
29    of the licensee, except with the prior consent of the commissioner,  
30    if the commissioner finds and gives the subject person notice of  
31    the following:

32    (A) The person has been finally convicted of a crime that is  
33    punishable by imprisonment for a term exceeding one year and  
34    which involves dishonesty or breach of trust; and

35    (B) The person's continuing to serve or resumption of service  
36    as a subject person of the licensee may pose a material threat to  
37    the interests of the licensee's clients or may threaten to materially  
38    impair public confidence in the licensee.

39    (3) The fact that a subject person of a licensee charged with a  
40    crime involving dishonesty or breach of trust is not finally

1 convicted of that crime shall not preclude the commissioner from  
2 issuing an order regarding the subject person pursuant to other  
3 provisions of this division.

4 (e) Within 30 days after an order is issued pursuant to  
5 subdivision (c) or (d), the person to whom the order is issued may  
6 file an application for a hearing.

7 (f) Any person to whom an order is issued under subdivision  
8 (a), (b), (c), or (d) may apply to the commissioner to modify or  
9 rescind that order. The commissioner shall not grant that  
10 application unless the commissioner finds that it is in the public  
11 interest to do so and that it is reasonable to believe that the person  
12 will, if and when he or she becomes a subject person of a licensee,  
13 comply with all applicable provisions of the applicable law and  
14 of any regulation or order issued thereunder.

15 (g) (1) It is unlawful for any subject person of a licensee or  
16 former subject person of a licensee to whom an order is issued  
17 under subdivision (a), (b), (c), or (d) to do any of the following,  
18 except with the prior consent of the commissioner, so long as the  
19 order is effective:

20 (A) To serve or act as a officer, director, 10 percent or more  
21 shareholder, managing member, or general partner of any licensee.

22 (B) To vote any shares or other securities of a licensee having  
23 voting rights, for the election of any person as a director of a  
24 licensee.

25 (C) Directly or indirectly, to solicit, procure, or transfer or  
26 attempt to transfer, or vote any proxy, consent, or authorization  
27 with respect to any shares or other securities of any licensee having  
28 voting rights.

29 (D) Otherwise to participate in any manner in the conduct of  
30 the business of any licensee.

31 (2) Any person who violates paragraph (1) shall, upon  
32 conviction, be punished by a fine of not more than ten thousand  
33 dollars (\$10,000) or imprisoned in the state prison, or in a county  
34 jail not to exceed one year, or by both such fine and imprisonment.

35 (3) If the commissioner believes that any person has violated  
36 paragraph (1), the commissioner may bring an action in a court  
37 of competent jurisdiction petitioning the court to assess that person  
38 a civil penalty in an amount as the commissioner may specify;  
39 provided, however, that the amount of the civil penalty shall not  
40 exceed two thousand five hundred dollars (\$2,500) for each

1 violation or, in the case of a continuing violation, two thousand  
2 five hundred dollars (\$2,500) for each day for which the violation  
3 continues.

4 In determining the amount of a civil penalty to be assessed under  
5 this paragraph, the court shall consider the financial resources  
6 and good faith of the person charged, the gravity of the violation,  
7 the history of previous violations by the person, and such other  
8 factors as in the opinion of the court may be relevant.

9 (h) A hearing held pursuant to this section shall be private  
10 unless the commissioner, in his or her discretion, after fully  
11 considering the views of the parties, determines that a public  
12 hearing is necessary to protect the public interest.

13 (i) For purposes of this section, "subject person" means any  
14 officer, director, 10 percent or more shareholder, managing  
15 member, or general partner.

16 SEC. 13. Section 17703 is added to the Financial Code, to  
17 read:

18 17703. (a) Notwithstanding any other provision of law, it is  
19 unlawful for any person to knowingly alter, destroy, mutilate,  
20 conceal, cover up, falsify, or make a false entry in any record,  
21 document, or tangible object with the intent to impede, obstruct,  
22 or influence the administration or enforcement of any provision  
23 of this division.

24 (b) Notwithstanding any other provision of law, it is unlawful  
25 for any person to knowingly make an untrue statement to the  
26 commissioner during the course of licensing, an investigation or  
27 examination.

28 (c) Any person who violates any provision of this section shall  
29 be liable for any administrative, civil, or criminal penalty  
30 authorized by law.

31 ~~SECTION 1.~~

32 SEC. 14. Section 22050 of the Financial Code is amended to  
33 read:

34 22050. (a) This division does not apply to any person doing  
35 business under any law of any state or of the United States relating  
36 to banks, trust companies, savings and loan associations, insurance  
37 premium finance agencies, credit unions, small business investment  
38 companies, California business and industrial development  
39 corporations, or licensed pawnbrokers.

1 (b) This division does not apply to a check casher who holds a  
2 valid permit issued pursuant to Section 1789.37 of the Civil Code  
3 when acting under the authority of that permit, and shall not apply  
4 to a person holding a valid license issued pursuant to Section 23005  
5 of the Financial Code when acting under the authority of that  
6 license.

7 (c) This division does not apply to a college or university making  
8 a loan for the purpose of permitting a person to pursue a program  
9 or course of study leading to a degree or certificate.

10 (d) This division does not apply to a broker-dealer acting  
11 pursuant to a certificate then in effect and issued pursuant to  
12 Section 25211 of the Corporations Code.

13 (e) This division does not apply to any person who makes no  
14 more than one loan in a 12-month period as long as that loan is a  
15 commercial loan as defined in Section 22502.

16 (f) This division does not apply to any public corporation as  
17 defined in Section 67510 of the Government Code, any public  
18 entity other than the state as defined in Section 811.2 of the  
19 Government Code, or any agency of any one or more of the  
20 foregoing, when making any loan so long as the public corporation,  
21 public entity, or agency of any one or more of the foregoing  
22 complies with all applicable federal and state laws and regulations.

23 (g) This section shall become operative December 31, 2004.

24 ~~SEC. 2.~~

25 *SEC. 15.* Section 22065 is added to the Financial Code, to  
26 read:

27 22065. (a) This division shall not apply to a bona fide debt  
28 financing transaction as long as all of the following requirements  
29 are met:

30 (1) The loan is a commercial loan, as defined in Section 22502.

31 (2) The borrower is a sophisticated borrower, as defined in  
32 subdivision (b).

33 (3) The debt financing transaction is for an amount of at least  
34 one million dollars (\$1,000,000), exclusive of fees and expenses.

35 (b) For purposes of this section, a sophisticated borrower means  
36 either of the following:

37 (1) An employee benefit plan within the meaning of the  
38 Employee Retirement Income Security Act.

(2) A charitable organization, corporation, limited liability company, trust, or partnership with assets exceeding five million dollars (\$5,000,000).

~~SEC. 3.~~

*SEC. 16.* Section 22105 of the Financial Code is amended to read:

22105. Upon the filing of an application pursuant to Section 22101 and the payment of the fees, the commissioner shall investigate the applicant and its general partners and persons owning or controlling, directly or indirectly, 10 percent or more of the outstanding interests or any person responsible for the conduct of the applicant's lending activities in this state, if the applicant is a partnership. If the applicant is a corporation, trust, limited liability company, or association, including an unincorporated organization, the commissioner shall investigate the applicant, its principal officers, directors, managing members, and persons owning or controlling, directly or indirectly, 10 percent or more of the outstanding equity securities or any person responsible for the conduct of the applicant's lending activities in this state. Upon the filing of an application pursuant to Section 22102 and the payment of the fees, the commissioner shall investigate the person responsible for the lending activity of the licensee at the new location described in the application. The investigation may be limited to information that was not included in prior applications filed pursuant to this division. If the commissioner determines that the applicant has satisfied this division and does not find facts constituting reasons for denial under Section 22109, the commissioner shall issue and deliver a license to the applicant.

For the purposes of this section, "principal officers" shall mean president, chief executive officer, treasurer, and chief financial officer, as may be applicable, and any other officer with direct responsibility for the conduct of the applicant's lending activities within the state.

~~SEC. 4.~~

*SEC. 17.* Section 22109 of the Financial Code is amended to read:

22109. (a) Upon reasonable notice and opportunity to be heard, the commissioner may deny the application for any of the following reasons:



1 (1) A false statement of a material fact has been made in the  
2 application.

3 (2) The applicant or an officer, director, general partner, person  
4 responsible for the applicant's lending activities in this state, or  
5 person owning or controlling, directly or indirectly, 10 percent or  
6 more of the outstanding interests or equity securities of the  
7 applicant has, within the last 10 years, been convicted of or pleaded  
8 nolo contendere to a crime, or committed an act involving  
9 dishonesty, fraud, or deceit, if the crime or act is substantially  
10 related to the qualifications, functions, or duties of a person  
11 engaged in business in accordance with this division.

12 (3) The applicant or an officer, director, general partner, person  
13 responsible for the applicant's lending activities in this state, or  
14 person owning or controlling, directly or indirectly, 10 percent or  
15 more of the outstanding interests or equity securities of the  
16 applicant has violated any provision of this division or the rules  
17 thereunder or any similar regulatory scheme of the State of  
18 California or a foreign jurisdiction.

19 (b) The application shall be considered withdrawn within the  
20 meaning of this section if the applicant fails to respond to a written  
21 notification of a deficiency in the application within 90 days of  
22 the date of the notification.

23 (c) The commissioner shall, within 60 days from the filing of  
24 a full and complete application for a license with the fees, either  
25 issue a license or file a statement of issues prepared in accordance  
26 with Chapter 5 (commencing with Section 11500) of Part 1 of  
27 Division 3 of Title 2 of the Government Code.

28 *SEC. 18. Section 22169 is added to the Financial Code, to*  
29 *read:*

30 *22169. (a) Notwithstanding Sections 22109 and 22168 or any*  
31 *other provision of law, the commissioner may issue an order*  
32 *suspending or removing a subject person of a licensee from his or*  
33 *her office with the licensee or from control of the licensee and*  
34 *prohibiting the subject person from further participating in any*  
35 *manner in the conduct of the business of the licensee, except with*  
36 *the prior consent of the commissioner, if, after notice and*  
37 *opportunity for a hearing, the commissioner finds the following:*

38 *(1) (A) The subject person has violated any provision of this*  
39 *division or of any regulation or order issued under this division,*

1 or any provision of any other applicable law relating to the  
2 business of a licensee; or

3 (B) The subject person has engaged or participated in any  
4 unsafe or unsound act with respect to the business of the licensee;  
5 or

6 (C) The subject person has committed or engaged in any act  
7 which constitutes a breach of his or her fiduciary duty as a subject  
8 person; and

9 (2) (A) The licensee has suffered or will probably suffer  
10 substantial financial loss or other damage by reason of that  
11 violation, act, or breach of fiduciary duty; or

12 (B) The interests of the licensee's customers have been or are  
13 likely to be seriously prejudiced by reason of the violation, act, or  
14 breach of fiduciary duty; or

15 (C) The subject person has received financial gain by reason  
16 of that violation, act, or breach of fiduciary duty; and

17 (3) The violation, act, or breach of fiduciary duty is one  
18 involving personal dishonesty on the part of the subject person or  
19 one that demonstrates a willful or continuing disregard for the  
20 safety or soundness of the licensee's business.

21 (b) The commissioner may issue an order suspending or  
22 removing a subject person of a licensee from his or her office with  
23 the licensee or from control of the licensee and prohibiting the  
24 subject person from further participating in any manner in the  
25 conduct of the business of the licensee, except with the prior  
26 consent of the commissioner; if, after notice and opportunity for  
27 a hearing, the commissioner finds the following:

28 (1) The subject person's conduct or practice with respect to  
29 another licensee or business institution has resulted in substantial  
30 financial loss or other damage; and

31 (2) The conduct or practice has evidenced personal dishonesty  
32 or willful or continuing disregard for the safety and soundness of  
33 the other licensee or business institution; and

34 (3) The conduct or practice is relevant in that it demonstrates  
35 unfitness to continue as a subject person of the licensee.

36 (c) The commissioner may immediately issue an order  
37 suspending or removing a subject person of a licensee from his or  
38 her office with the licensee or from control of the licensee and  
39 prohibiting the subject person from further participating in any  
40 manner in the conduct of the business of the licensee, except with

1 *the prior consent of the commissioner, if the commissioner finds*  
2 *and provides the subject person notice of the following:*

3 *(1) It is necessary for the protection of the licensee or the*  
4 *interests of the licensee's clients that the commissioner issue the*  
5 *order immediately, and*

6 *(2) (A) Any of the factors set forth in paragraphs (1) and (2)*  
7 *of subdivision (a) and any of the factors set forth in paragraph (3)*  
8 *of subdivision (b) are true with respect to the subject person; or*

9 *(B) Any of the factors set forth in paragraphs (1), (2), and (3)*  
10 *of subdivision (b), and the factor set forth in paragraph (3) of*  
11 *subdivision (b) are true with respect to the subject person.*

12 *(d) (1) The commissioner may immediately issue an order*  
13 *suspending or removing a subject person of a licensee from his or*  
14 *her office with the licensee or from control of the licensee and*  
15 *prohibiting the subject person from further participating in any*  
16 *manner in the conduct of the business of the licensee, except with*  
17 *the prior consent of the commissioner, if the commissioner finds*  
18 *and gives the subject person notice of the following:*

19 *(A) The subject person has been charged in an indictment issued*  
20 *by a grand jury or in an information, complaint, or similar*  
21 *pleading issued by a United States attorney, district attorney, or*  
22 *other governmental official or agency authorized to prosecute*  
23 *crimes, with a crime that is punishable by imprisonment for a term*  
24 *exceeding one year and that involves dishonesty or breach of trust;*  
25 *and*

26 *(B) The person's continuing to serve as a subject person of the*  
27 *licensee may pose a material threat to the interest of the licensee's*  
28 *clients or may threaten to materially impair public confidence in*  
29 *the licensee. In case the criminal proceedings are terminated other*  
30 *than by a judgment of conviction the order shall be deemed*  
31 *rescinded.*

32 *(2) The commissioner may immediately issue an order*  
33 *suspending or removing a subject person of a licensee, or a former*  
34 *subject of a licensee, from his or her office with the licensee or*  
35 *from control of the licensee and prohibiting the person from further*  
36 *participating in any manner in the conduct of the business of the*  
37 *licensee, except with the prior consent of the commissioner, if the*  
38 *commissioner finds and gives the subject person notice of the*  
39 *following:*

1     (A) *The person has been finally convicted of a crime that is*  
2 *punishable by imprisonment for a term exceeding one year and*  
3 *that involves dishonesty or breach of trust; and*

4     (B) *The person's continuing to serve or resumption of service*  
5 *as a subject person of the licensee may pose a material threat to*  
6 *the interests of the licensee's clients or may threaten to materially*  
7 *impair public confidence in the licensee.*

8     (3) *The fact that a subject person of a licensee charged with a*  
9 *crime involving dishonesty or breach of trust is not finally*  
10 *convicted of that crime shall not preclude the commissioner from*  
11 *issuing an order regarding the subject person pursuant to other*  
12 *provisions of this division.*

13     (e) *Within 30 days after an order is issued pursuant to*  
14 *subdivision (c) or (d), the person to whom the order is issued may*  
15 *file an application for a hearing.*

16     (f) *Any person to whom an order is issued under subdivision*  
17 *(a), (b), (c), or (d) may apply to the commissioner to modify or*  
18 *rescind that order. The commissioner shall not grant that*  
19 *application unless the commissioner finds that it is in the public*  
20 *interest to do so and that it is reasonable to believe that the person*  
21 *will, if and when he or she becomes a subject person of a licensee,*  
22 *comply with all applicable provisions of the applicable law and*  
23 *of any regulation or order issued thereunder.*

24     (g) (1) *It is unlawful for any subject person of a licensee or*  
25 *former subject person of a licensee to whom an order is issued*  
26 *under subdivision (a), (b), (c), or (d) to do any of the following,*  
27 *except with the prior consent of the commissioner, so long as the*  
28 *order is effective:*

29     (A) *To serve or act as a officer, director, 10 percent or more*  
30 *shareholder, managing member, or general partner of any licensee.*

31     (B) *To vote any shares or other securities of a licensee having*  
32 *voting rights, for the election of any person as a director of a*  
33 *licensee.*

34     (C) *Directly or indirectly, to solicit, procure, or transfer or*  
35 *attempt to transfer, or vote any proxy, consent, or authorization*  
36 *with respect to any shares or other securities of any licensee having*  
37 *voting rights.*

38     (D) *Otherwise to participate in any manner in the conduct of*  
39 *the business of any licensee.*

1 (2) Any person who violates paragraph (1) shall, upon  
2 conviction, be punished by a fine of not more than ten thousand  
3 dollars (\$10,000) or imprisoned in the state prison, or in a county  
4 jail not to exceed one year, or by both such fine and imprisonment.

5 (3) If the commissioner believes that any person has violated  
6 paragraph (1), the commissioner may bring an action in a court  
7 of competent jurisdiction petitioning the court to assess that person  
8 a civil penalty in an amount as the commissioner may specify;  
9 provided, however, that the amount of the civil penalty shall not  
10 exceed two thousand five hundred dollars (\$2,500) for each  
11 violation or, in the case of a continuing violation, two thousand  
12 five hundred dollars (\$2,500) for each day for which the violation  
13 continues.

14 In determining the amount of a civil penalty to be assessed under  
15 this paragraph, the court shall consider the financial resources  
16 and good faith of the person charged, the gravity of the violation,  
17 the history of previous violations by the person, and such other  
18 factors as in the opinion of the court may be relevant.

19 (h) A hearing held pursuant to this section shall be private  
20 unless the commissioner, in his or her discretion, after fully  
21 considering the views of the parties, determines that a public  
22 hearing is necessary to protect the public interest.

23 (i) For purposes of this section, "subject person" means any  
24 officer, director, 10 percent or more shareholder, managing  
25 member, or general partner.

26 SEC. 19. Section 22170 is added to the Financial Code, to  
27 read:

28 22170. (a) Notwithstanding any other provision of law, it is  
29 unlawful for any person to knowingly alter, destroy, mutilate,  
30 conceal, cover up, falsify, or make a false entry in any record,  
31 document, or tangible object with the intent to impede, obstruct,  
32 or influence the administration or enforcement of any provision  
33 of this division.

34 (b) Notwithstanding any other provision of law, it is unlawful  
35 for any person to knowingly make an untrue statement to the  
36 commissioner during the course of licensing, an investigation or  
37 examination.

38 (c) Any person who violates any provision of this section shall  
39 be liable for any administrative, civil, or criminal penalty  
40 authorized by law.

1     *SEC. 20. Section 23011.5 is added to the Financial Code, to*  
2     *read:*

3     *23011.5. (a) Notwithstanding Sections 23011 or any other*  
4     *provision of law, the commissioner may issue an order suspending*  
5     *or removing a subject person of a licensee from his or her office*  
6     *with the licensee or from control of the licensee and prohibiting*  
7     *the subject person from further participating in any manner in the*  
8     *conduct of the business of the licensee, except with the prior*  
9     *consent of the commissioner; if, after notice and opportunity for*  
10    *a hearing, the commissioner finds the following:*

11    *(1) (A) The subject person has violated any provision of this*  
12    *division or of any regulation or order issued under this division,*  
13    *or any provision of any other applicable law relating to the*  
14    *business of a licensee; or*

15    *(B) That the subject person has engaged or participated in any*  
16    *unsafe or unsound act with respect to the business of the licensee;*  
17    *or*

18    *(C) The subject person has committed or engaged in any act*  
19    *which constitutes a breach of his or her fiduciary duty as a subject*  
20    *person; and*

21    *(2) (A) The licensee has suffered or will probably suffer*  
22    *substantial financial loss or other damage by reason of that*  
23    *violation, act, or breach of fiduciary duty; or*

24    *(B) The interests of the licensee's customers have been or are*  
25    *likely to be seriously prejudiced by reason of the violation, act, or*  
26    *breach of fiduciary duty; or*

27    *(C) The subject person has received financial gain by reason*  
28    *of that violation, act, or breach of fiduciary duty; and*

29    *(3) The violation, act, or breach of fiduciary duty is one*  
30    *involving personal dishonesty on the part of the subject person or*  
31    *one that demonstrates a willful or continuing disregard for the*  
32    *safety or soundness of the licensee's business.*

33    *(b) The commissioner may issue an order suspending or*  
34    *removing a subject person of a licensee from his or her office with*  
35    *the licensee or from control of the licensee and prohibiting the*  
36    *subject person from further participating in any manner in the*  
37    *conduct of the business of the licensee, except with the prior*  
38    *consent of the commissioner; if, after notice and opportunity for*  
39    *a hearing, the commissioner finds the following:*

1     (1) *The subject person's conduct or practice with respect to*  
2 *another licensee or business institution has resulted in substantial*  
3 *financial loss or other damage; and*

4     (2) *The conduct or practice has evidenced personal dishonesty*  
5 *or willful or continuing disregard for the safety and soundness of*  
6 *the other licensee or business institution; and*

7     (3) *The conduct or practice is relevant in that it demonstrates*  
8 *unfitness to continue as a subject person of the licensee.*

9     (c) *The commissioner may immediately issue an order*  
10 *suspending or removing a subject person of a licensee from his or*  
11 *her office with the licensee or from control of the licensee and*  
12 *prohibiting the subject person from further participating in any*  
13 *manner in the conduct of the business of the licensee, except with*  
14 *the prior consent of the commissioner, if the commissioner finds*  
15 *and provides the subject person notice of the following:*

16     (1) *It is necessary for the protection of the licensee or the*  
17 *interests of the licensee's clients that the commissioner issue the*  
18 *order immediately, and*

19     (2) (A) *Any of the factors set forth in paragraphs (1) and (2)*  
20 *of subdivision (a) and any of the factors set forth in paragraph (3)*  
21 *of subdivision (b) are true with respect to the subject person; or*

22     (B) *Any of the factors set forth in paragraphs (1), (2), and (3)*  
23 *of subdivision (b), and the factor set forth in paragraph (3) of*  
24 *subdivision (b) are true with respect to the subject person.*

25     (d) (1) *The commissioner may immediately issue an order*  
26 *suspending or removing a subject person of a licensee from his or*  
27 *her office with the licensee or from control of the licensee and*  
28 *prohibiting the subject person from further participating in any*  
29 *manner in the conduct of the business of the licensee, except with*  
30 *the prior consent of the commissioner, if the commissioner finds*  
31 *and gives the subject person notice of the following:*

32     (A) *The subject person has been charged in an indictment issued*  
33 *by a grand jury or in an information, complaint, or similar*  
34 *pleading issued by a United States attorney, district attorney, or*  
35 *other governmental official or agency authorized to prosecute*  
36 *crimes, with a crime that is punishable by imprisonment for a term*  
37 *exceeding one year and that involves dishonesty or breach of trust;*  
38 *and*

39     (B) *The person's continuing to serve as a subject person of the*  
40 *licensee may pose a material threat to the interest of the licensee's*

1 clients or may threaten to materially impair public confidence in  
2 the licensee. In case the criminal proceedings are terminated other  
3 than by a judgment of conviction the order shall be deemed  
4 rescinded.

5 (2) The commissioner may immediately issue an order  
6 suspending or removing a subject person of a licensee or a former  
7 subject of a licensee, from his or her office with the licensee or  
8 from control of the licensee, and prohibiting the person from  
9 further participating in any manner in the conduct of the business  
10 of the licensee, except with the prior consent of the commissioner,  
11 if the commissioner finds and gives the subject person notice of  
12 the following:

13 (A) The person has been finally convicted of a crime that is  
14 punishable by imprisonment for a term exceeding one year and  
15 that involves dishonesty or breach of trust; and

16 (B) The person's continuing to serve or resumption of service  
17 as a subject person of the licensee may pose a material threat to  
18 the interests of the licensee's clients or may threaten to materially  
19 impair public confidence in the licensee.

20 (3) The fact that a subject person of a licensee charged with a  
21 crime involving dishonesty or breach of trust is not finally  
22 convicted of that crime shall not preclude the commissioner from  
23 issuing an order regarding the subject person pursuant to other  
24 provisions of this division.

25 (e) Within 30 days after an order is issued pursuant to  
26 subdivision (c) or (d), the person to whom the order is issued may  
27 file an application for a hearing.

28 (f) Any person to whom an order is issued under subdivision  
29 (a), (b), (c), or (d) may apply to the commissioner to modify or  
30 rescind that order. The commissioner shall not grant that  
31 application unless the commissioner finds that it is in the public  
32 interest to do so and that it is reasonable to believe that the person  
33 will, if and when he or she becomes a subject person of a licensee,  
34 comply with all applicable provisions of the applicable law and  
35 of any regulation or order issued thereunder.

36 (g) (1) It is unlawful for any subject person of a licensee or  
37 former subject person of a licensee to whom an order is issued  
38 under subdivision (a), (b), (c), or (d) to do any of the following,  
39 except with the prior consent of the commissioner, so long as the  
40 order is effective:



1 (A) To serve or act as a officer, director, 10 percent or more  
2 shareholder, managing member, or general partner of any licensee.

3 (B) To vote any shares or other securities of a licensee having  
4 voting rights, for the election of any person as a director of a  
5 licensee.

6 (C) Directly or indirectly, to solicit, procure, or transfer or  
7 attempt to transfer, or vote any proxy, consent, or authorization  
8 with respect to any shares or other securities of any licensee having  
9 voting rights.

10 (D) Otherwise to participate in any manner in the conduct of  
11 the business of any licensee.

12 (2) Any person who violates paragraph (1) shall, upon  
13 conviction, be punished by a fine of not more than ten thousand  
14 dollars (\$10,000) or imprisoned in the state prison, or in a county  
15 jail not to exceed one year, or by both such fine and imprisonment.

16 (3) If the commissioner believes that any person has violated  
17 paragraph (1), the commissioner may bring an action in a court  
18 of competent jurisdiction petitioning the court to assess that person  
19 a civil penalty in an amount as the commissioner may specify;  
20 provided, however, that the amount of the civil penalty shall not  
21 exceed two thousand five hundred dollars (\$2,500) for each  
22 violation or, in the case of a continuing violation, two thousand  
23 five hundred dollars (\$2,500) for each day for which the violation  
24 continues.

25 In determining the amount of a civil penalty to be assessed under  
26 this paragraph, the court shall consider the financial resources  
27 and good faith of the person charged, the gravity of the violation,  
28 the history of previous violations by the person, and such other  
29 factors as in the opinion of the court may be relevant.

30 (h) A hearing held pursuant to this section shall be private  
31 unless the commissioner, in his or her discretion, after fully  
32 considering the views of the parties, determines that a public  
33 hearing is necessary to protect the public interest.

34 (i) For purposes of this section, "subject person" means any  
35 officer, director, 10 percent or more shareholder, managing  
36 member, or general partner.

37 SEC. 21. Section 23015 is added to the Financial Code, to  
38 read:

39 23015. (a) Notwithstanding any other provision of law, it is  
40 unlawful for any person to knowingly alter, destroy, mutilate,

1 *conceal, cover up, falsify, or make a false entry in any record,*  
2 *document, or tangible object with the intent to impede, obstruct,*  
3 *or influence the administration or enforcement of any provision*  
4 *of this division.*

5 *(b) Notwithstanding any other provision of law, it is unlawful*  
6 *for any person to knowingly make an untrue statement to the*  
7 *commissioner during the course of licensing, an investigation or*  
8 *examination.*

9 *(c) Any person who violates any provision of this section shall*  
10 *be liable for any administrative, civil, or criminal penalty*  
11 *authorized by law.*

12 ~~SEC. 5.~~

13 *SEC. 22.* Section 50123 of the Financial Code is amended to  
14 read:

15 50123. (a) A license shall remain in effect until suspended,  
16 surrendered, or revoked.

17 (b) A licensee that ceases to engage in the business regulated  
18 by this division and desires to no longer be licensed shall inform  
19 the commissioner in writing and, at that time, surrender the license  
20 and all other indicia of licensure to the commissioner. The licensee  
21 shall file a plan for the withdrawal from regulated business, and  
22 the plan shall include a timetable for the disposition of the business.  
23 The plan shall also include a closing audit performed by an  
24 independent certified public accountant or a review or other  
25 procedure prescribed by rule or order of the commissioner. Upon  
26 receipt of the written notice and plan, the commissioner shall  
27 review the plan and, if satisfactory to the commissioner, shall  
28 accept the surrender of the license. A license is not surrendered  
29 until its tender is accepted in writing by the commissioner after a  
30 review, and a finding has been made on the licensee's plan required  
31 to be filed by this section, and a determination has been made that  
32 there is no violation of this law.

33 (c) A licensee may not surrender its license under this division  
34 and, under the authority of a real estate license, subsequently  
35 engage in residential mortgage lending or servicing activities that  
36 are subject to this division, unless the licensee has been licensed  
37 under this division for a period of five years or more.

38 *SEC. 23.* Section 50318.5 is added to the Financial Code, to  
39 read:

1     50318.5. (a) Notwithstanding Section 50318 or any other  
2     provision of law, the commissioner may issue an order suspending  
3     or removing a subject person of a licensee from his or her office  
4     with the licensee or from control of the licensee and prohibiting  
5     the subject person from further participating in any manner in the  
6     conduct of the business of the licensee, except with the prior  
7     consent of the commissioner, if, after notice and opportunity for  
8     a hearing, the commissioner finds the following:

9     (1) (A) The subject person has violated any provision of this  
10    division or of any regulation or order issued under this division,  
11    or any provision of any other applicable law relating to the  
12    business of a licensee; or

13    (B) The subject person has engaged or participated in any  
14    unsafe or unsound act with respect to the business of the licensee;  
15    or

16    (C) The subject person has committed or engaged in any act  
17    which constitutes a breach of his or her fiduciary duty as a subject  
18    person; and

19    (2) (A) The licensee has suffered or will probably suffer  
20    substantial financial loss or other damage by reason of that  
21    violation, act, or breach of fiduciary duty; or

22    (B) The interests of the licensee's customers have been or are  
23    likely to be seriously prejudiced by reason of the violation, act, or  
24    breach of fiduciary duty; or

25    (C) The subject person has received financial gain by reason  
26    of that violation, act, or breach of fiduciary duty; and

27    (3) The violation, act, or breach of fiduciary duty is one  
28    involving personal dishonesty on the part of the subject person or  
29    one that demonstrates a willful or continuing disregard for the  
30    safety or soundness of the licensee's business.

31    (b) The commissioner may issue an order suspending or  
32    removing a subject person of a licensee from his or her office with  
33    the licensee or from control of the licensee and prohibiting the  
34    subject person from further participating in any manner in the  
35    conduct of the business of the licensee, except with the prior  
36    consent of the commissioner, if, after notice and opportunity for  
37    a hearing, the commissioner finds the following:

38    (1) The subject person's conduct or practice with respect to  
39    another licensee or business institution has resulted in substantial  
40    financial loss or other damage; and

1     (2) *The conduct or practice has evidenced personal dishonesty*  
2 *or willful or continuing disregard for the safety and soundness of*  
3 *the other licensee or business institution; and*

4     (3) *The conduct or practice is relevant in that it demonstrates*  
5 *unfitness to continue as a subject person of the licensee.*

6     (c) *The commissioner may immediately issue an order*  
7 *suspending or removing a subject person of a licensee from his or*  
8 *her office with the licensee or from control of the licensee and*  
9 *prohibiting the subject person from further participating in any*  
10 *manner in the conduct of the business of the licensee, except with*  
11 *the prior consent of the commissioner; if the commissioner finds*  
12 *and provides the subject person notice of the following:*

13     (1) *It is necessary for the protection of the licensee or the*  
14 *interests of the licensee's clients that the commissioner issue the*  
15 *order immediately, and*

16     (2) (A) *Any of the factors set forth in paragraphs (1) and (2)*  
17 *of subdivision (a) and any of the factors set forth in paragraph (3)*  
18 *of subdivision (b) are true with respect to the subject person; or*

19     (B) *Any of the factors set forth in paragraphs (1), (2), and (3)*  
20 *of subdivision (b), and the factor set forth in paragraph (3) of*  
21 *subdivision (b) are true with respect to the subject person.*

22     (d) (1) *The commissioner may immediately issue an order*  
23 *suspending or removing a subject person of a licensee from his or*  
24 *her office with the licensee or from control of the licensee and*  
25 *prohibiting the subject person from further participating in any*  
26 *manner in the conduct of the business of the licensee, except with*  
27 *the prior consent of the commissioner if the commissioner finds*  
28 *and gives the subject person notice of the following:*

29     (A) *The subject person has been charged in an indictment issued*  
30 *by a grand jury or in an information, complaint, or similar*  
31 *pleading issued by a United States attorney, district attorney, or*  
32 *other governmental official or agency authorized to prosecute*  
33 *crimes, with a crime that is punishable by imprisonment for a term*  
34 *exceeding one year and that involves dishonesty or breach of trust;*  
35 *and*

36     (B) *The person's continuing to serve as a subject person of the*  
37 *licensee may pose a material threat to the interest of the licensee's*  
38 *clients or may threaten to materially impair public confidence in*  
39 *the licensee. In case the criminal proceedings are terminated other*

1 *than by a judgment of conviction the order shall be deemed*  
2 *rescinded.*

3 *(2) The commissioner may immediately issue an order*  
4 *suspending or removing a subject person of a licensee, or a former*  
5 *subject of a licensee, from his or her office with the licensee or*  
6 *from control of the licensee and prohibiting the person from further*  
7 *participating in any manner in the conduct of the business of the*  
8 *licensee, except with the prior consent of the commissioner, if the*  
9 *commissioner finds and gives the subject person notice of the*  
10 *following:*

11 *(A) The person has been finally convicted of a crime that is*  
12 *punishable by imprisonment for a term exceeding one year and*  
13 *that involves dishonesty or breach of trust; and*

14 *(B) The person's continuing to serve or resumption of service*  
15 *as a subject person of the licensee may pose a material threat to*  
16 *the interests of the licensee's clients or may threaten to materially*  
17 *impair public confidence in the licensee.*

18 *(3) The fact that a subject person of a licensee charged with a*  
19 *crime involving dishonesty or breach of trust is not finally*  
20 *convicted of that crime shall not preclude the commissioner from*  
21 *issuing an order regarding the subject person pursuant to other*  
22 *provisions of this division.*

23 *(e) Within 30 days after an order is issued pursuant to*  
24 *subdivision (c) or (d), the person to whom the order is issued may*  
25 *file an application for a hearing.*

26 *(f) Any person to whom an order is issued under subdivision*  
27 *(a), (b), (c), or (d) may apply to the commissioner to modify or*  
28 *rescind that order. The commissioner shall not grant that*  
29 *application unless the commissioner finds that it is in the public*  
30 *interest to do so and that it is reasonable to believe that the person*  
31 *will, if and when he or she becomes a subject person of a licensee,*  
32 *comply with all applicable provisions of the applicable law and*  
33 *of any regulation or order issued thereunder.*

34 *(g) (1) It is unlawful for any subject person of a licensee or*  
35 *former subject person of a licensee to whom an order is issued*  
36 *under subdivision (a), (b), (c), or (d) to do any of the following,*  
37 *except with the prior consent of the commissioner, so long as the*  
38 *order is effective:*

39 *(A) To serve or act as a officer, director, 10 percent or more*  
40 *shareholder, managing member, or general partner of any licensee.*

1     (B) To vote any shares or other securities of a licensee having  
2     voting rights, for the election of any person as a director of a  
3     licensee.

4     (C) Directly or indirectly, to solicit, procure, or transfer or  
5     attempt to transfer, or vote any proxy, consent, or authorization  
6     with respect to any shares or other securities of any licensee having  
7     voting rights.

8     (D) Otherwise to participate in any manner in the conduct of  
9     the business of any licensee.

10    (2) Any person who violates paragraph (1) shall, upon  
11    conviction, be punished by a fine of not more than ten thousand  
12    dollars (\$10,000) or imprisoned in the state prison, or in a county  
13    jail not to exceed one year, or by both such fine and imprisonment.

14    (3) If the commissioner believes that any person has violated  
15    paragraph (1), the commissioner may bring an action in a court  
16    of competent jurisdiction petitioning the court to assess that person  
17    a civil penalty in an amount as the commissioner may specify;  
18    provided, however, that the amount of the civil penalty shall not  
19    exceed two thousand five hundred dollars (\$2,500) for each  
20    violation or, in the case of a continuing violation, two thousand  
21    five hundred dollars (\$2,500) for each day for which the violation  
22    continues.

23    In determining the amount of a civil penalty to be assessed under  
24    this paragraph, the court shall consider the financial resources  
25    and good faith of the person charged, the gravity of the violation,  
26    the history of previous violations by the person, and such other  
27    factors as in the opinion of the court may be relevant.

28    (h) A hearing held pursuant to this section shall be private  
29    unless the commissioner, in his or her discretion, after fully  
30    considering the views of the parties, determines that a public  
31    hearing is necessary to protect the public interest.

32    (i) For purposes of this section, "subject person" means any  
33    officer, director, 10 percent or more shareholder, managing  
34    member, or general partner.

35    SEC. 24. Section 50512 is added to the Financial Code, to  
36    read:

37    50512. (a) Notwithstanding any other provision of law, it is  
38    unlawful for any person to knowingly alter, destroy, mutilate,  
39    conceal, cover up, falsify, or make a false entry in any record,  
40    document, or tangible object with the intent to impede, obstruct,

1 *or influence the administration or enforcement of any provision*  
2 *of this division.*

3 *(b) Notwithstanding any other provision of law, it is unlawful*  
4 *for any person to knowingly make an untrue statement to the*  
5 *commissioner during the course of licensing, an investigation or*  
6 *examination.*

7 *(c) Any person who violates any provision of this section shall*  
8 *be liable for any administrative, civil, or criminal penalty*  
9 *authorized by law.*

10 *SEC. 25. No reimbursement is required by this act pursuant*  
11 *to Section 6 of Article XIII B of the California Constitution because*  
12 *the only costs that may be incurred by a local agency or school*  
13 *district will be incurred because this act creates a new crime or*  
14 *infraction, eliminates a crime or infraction, or changes the penalty*  
15 *for a crime or infraction, within the meaning of Section 17556 of*  
16 *the Government Code, or changes the definition of a crime within*  
17 *the meaning of Section 6 of Article XIII B of the California*  
18 *Constitution.*